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April 3, 2019

Dana A. Roth, Esq.
Inspector General
Office of the Inspector General
80 Maiden Lane
New York, NY 10038

Re: March 4, 2019 DOI PPRs regarding DOC Violence Statistics

Dear Inspector General Roth:

Please allow this letter to serve as the Department of Correction's ("DOC" or "the Department") response to your letter dated March 4, 2019 regarding DOC's reporting of violence statistics. In the March 4th letter you detailed DOI's findings from an investigation into violence within several DOC facilities during the three-month period of time from February 1, 2017 through April 30, 2017. The March 4th letter also included 13 policy and procedure recommendations intended to address DOI's concerns arising from its investigation. The Department shares DOI's commitment to accurate collection and reporting of data related to violence within our facilities, and has carefully considered each of DOI's recommendations. The Department's response to each recommendation is set forth below.

1. *"All inmate-on-inmate fights must be reported to COD and captured in IRS as an independent 'Primary Incident Type' category"*

The Department does not accept DOI's recommendation that inmate-on-inmate fights be reported to COD and entered into IRS. The Department utilizes many databases to capture, store, and report out on data and statistics, not solely IRS. With respect to inmate-on-inmate fights, the Department created the Inmate Fight Tracking Database pursuant to the Nunez Consent Judgment to track all inmate-on-inmate fights. Additionally, any inmate-on-inmate fight which results in a serious injury to inmate (including, but not limited to, a stabbing or slashing) or which is the primary reason for a Use of Force incident, is also contained in IRS. For purposes of public reporting on the number of inmate-on-inmate fights within DOC facilities, the Department will continue to utilize both the Inmate Fight Tracking Database and IRS.

2. *"All assault-on-staff incidents must be reported to COD and captured in IRS as an independent 'Primary Incident Type' category"*

The Department partially accepts DOI's recommendation that all assaults on staff should be reported to COD and entered into IRS as an independent Primary Incident Type. The Department plans to modify IRS to include a new Primary Incident Type called "Assault on Staff without a UOF or Serious Injury". This new Primary Incident Type will be used to track all assaults on staff which are not the primary reason for a Use of Force

incident and which do not result in a serious injury to a staff member. In addition, the modification to IRS will include ability to enter the type of assault, i.e., spitting, splashing, kicking, hitting, etc. The Department will continue to track all other assaults on staff as either a Serious Injury to Staff or a Use of Force with the reason for force being an assault on staff.

3. DOC should create a sub category in IRS that would filter assault-on-staff incidents to identify a distinction between physical force assault on staff and spitting/splashing incidents”

The Department partially accepts DOI's recommendation that DOC create a mechanism in IRS to identify a distinction between physical assault and spitting/splashing incidents. As set forth above in response to DOI's second recommendation, DOC's planned addition to IRS of a new Primary Incident Type called "Assault on Staff without a UOF or Serious Injury" will include the ability to enter the type of assault, i.e., spitting, splashing, kicking, hitting, etc.

4. Assaults involving non-uniformed staff members occurring on DOC property should be reported to COD and captured in IRS as an independent ‘Primary Incident Type’ category”

The Department accepts DOI's recommendation that assaults on non-uniformed staff members be reported to COD and captured in IRS. All assaults on non-uniformed DOC staff, visitors, and non-DOC contractors or health care providers are already reported to COD and captured through the Primary Incident Type "Criminal Act".

5. “DOC should create a uniform classification system for all violent incidents that occur within DOC”

The Department does not accept DOI's recommendation that DOC create a uniform classification system for all violent incidents, including Use of Force incidents, inmate-on-inmate fights, and assaults on staff. While the Department appreciates DOI's concern that the current definitions may cause confusion to outside investigative bodies and/or the public who view DOC's data, the difference between the class of force (A, B, C, or P) and the serious injury definitions is purposeful.

With respect to Use of Force, the class definitions are not intended to indicate whether an involved inmate or staff member sustained a "serious injury" as defined by medical professionals. Importantly, the class definitions are not based solely on the type of injury, but also on the type of force used. For example, a Class B Use of Force includes the forcible use of mechanical restraints that results in no or minor injury, whereas a Class C Use of Force includes all other Uses of Force which result in no injury. If the class definitions were based solely on injury, these types of incidents would receive the same classification. Further, the class definitions are set forth in the Nunez Consent Judgment and the Department's Use of Force Directive 5006R-D as approved by the court-appointed Nunez monitor, and any change would require monitor and court approval.

With respect to "serious injuries", the Department has recently been engaged with the Board of Correction and our partners from Correctional Health Services ("CHS") to address any actual or perceived discrepancies in our respective agencies' reporting on serious injuries to inmates and staff sustained as the result of Use of Force incidents. As part of this initiative, the Department intends to modify our Reporting Unusual Incidents Directive 5000R-A to ensure the Department's definition of "serious injury" is consistent with that of CHS. The Department further intends to modify our Injury to Inmate Report form to include a checkbox section where CHS clinicians will indicate whether an injury is "serious" as defined by medical professionals. Finally, the Department and CHS intend to share data in a manner which will assist our two agencies in aligning our data reporting on this issue.

6. “DOC should create a complete, uniform list of all incidents that are required to be reported to COD and documented in IRS, which shall be distributed to all COD staff and maintained in all DOC facilities”

The Department accepts DOI’s recommendation that DOC create a comprehensive list of all incidents that are required to be reported to COD. The Department intends to update our Reporting Unusual Incidents Directive 5000R-A following the implementation of any changes as a result of DOI’s March 4th letter and recommendations, as well as our ongoing collaboration with CHS on the tracking of serious injuries. The Department will distribute the revised directive in accordance with existing protocols for the publication of new policies, including teletypes and roll call announcements to educate all staff on the changes.

7. “DOC should enter reports electronically”

The Department partially accepts DOI’s recommendation that DOC enter all reports electronically. While the Department shares the goal of transitioning from paper-based forms to fillable online/electronic forms, such a change is currently not feasible on a widespread level. Many of our staff assigned to facility housing areas do not have regular access to desktop computers, and there are technological infrastructure barriers, security concerns, and monetary funding issues which prevent the widespread use of alternatives such as tablets. Further, many of the Department’s forms and documents require signatures from inmates, as well as information and signatures from non-DOC employees such as CHS clinicians. Despite these challenges, the Department is engaged in a paperwork reduction analysis to determine whether there are any paper-based processes which can be transitioned into electronic databases, and as we move forward in developing new modern systems the Department will continue to search for solutions to reduce our reliance on paper forms. Further, as described below in response to DOI’s eighth recommendation, the Department’s new Case Management System (“CMS”) electronically maintains all records related to Use of Force incidents, investigations, and the subsequent disciplinary process. The Department also plans to expand CMS to cover all Department investigative processes in the future.

8. “DOC should implement an electronic filing system for DOC Records, including Injury to Inmate Reports, Use of Force Reports, and Incident Reports”

The Department partially accepts DOI’s recommendation that DOC implement an electronic filing system for DOC records. As an initial matter, the Department is one of several City agencies chosen to participate in a Citywide Records Management initiative, intended to create electronic storage solutions for City records. The initiative is in the beginning stages and is intended to create long-term solutions rather than address immediate needs. In the interim, the Department appreciates DOI’s concern that DOC was unable to locate 39% of the Injury to Inmate Reports requested by DOI as part of this investigation. Accordingly, the Department is working to create a series of folders on our network shared drive where all facilities will be expected to scan and upload all Injury to Inmate Reports going forward.

Additionally, the Department’s new CMS electronically maintains all records related to Use of Force incidents, investigations, and the subsequent disciplinary process. Staff are expected to scan and upload all Staff Use of Force and Use of Force Witness Reports, Injury to Inmate Reports, and any other relevant paper documents into CMS. Further, all investigative reports are entered directly into CMS rather than on paper forms. While CMS is currently only utilized for Use of Force investigations, all Department investigative processes will eventually be conducted inside of CMS after final development.

9. “Non-Reportable Logbooks should be used only for facility maintenance”

The Department does not accept DOI’s recommendation that non-reportable logbooks be restricted to only issues pertaining to facility maintenance. The Department shares DOI’s interest in ensuring that all reportable

incidents are entered as required into IRS or other Department databases used for collecting, storing, and reporting data. The non-reportable logbooks are frequently used by staff to make notations of issues requiring follow-up from staff on the next tour and therefore serve an important function. However, to the extent that DOI found examples of Use of Force, inmate-on-inmate fight, or assault on staff incidents inside of non-reportable logbooks without a corresponding report in IRS or the Inmate Fight Tracking Database, the Department will re-educate DOC staff on the requirement to report all incidents through COD for entry into IRS, or through one of our other electronic databases. Further, with respect to assaults on staff which are not the result of a Use of Force incident or which do not result in a serious injury to staff, the Department will be modifying IRS to contain a new Primary Incident Type, as discussed above in response to DOI's second recommendation. Accordingly, such incidents should be maintained in IRS going forward.

10. “COD staff must review associated medical records before finalizing classification of violence (A, B, C, or P) in use of force, assault on staff, and inmate-on-inmate fight incidents”

The Department does not accept DOI's recommendation that COD staff review medical records prior to determining the classification of an incident. DOI's recommendation focuses on Use of Force incidents, and appears to be based on a concern of misclassified incidents. However, the Use of Force classification level is only determined after a facility Tour Commander receives injury information from a CHS clinician or other medical provider and reports that information to COD. Moreover, it is the Investigations & Trials Division rather than COD, which is responsible for reviewing medical and other documents to determine whether a Use of Force was appropriately classified. Additionally, the proper classification of Use of Force incidents is actively monitored by the Nunez court-appointed monitor, who has found through independent audits that there is no evidence that the Department is routinely or purposefully misclassifying incidents. In fact, the Department has been in substantial compliance with the requirement that we properly classify each Use of Force incident for the past five Reporting Periods – since March 1, 2016 – and anticipates continuing that substantial compliance in the upcoming 7th Report of the Nunez Independent Monitor scheduled to be filed on April 18, 2019.

11. “Terminate the use of unrecorded phone lines in COD”

The Department does not accept DOI's recommendation that DOC terminate the use of unrecorded phone lines in COD. The unrecorded phone lines serve the useful purpose of ensuring that all incidents required to be reported to COD are accurately reported. Staff who have questions regarding whether an incident is required to be reported can call an unrecorded phone line with the inquiry without worry of embarrassment. COD staff can also provide guidance to facility staff regarding what information needs to be gathered prior to calling a recorded line to make an official report.

12. “COD should be staffed with a minimum of two Assistant Deputy Warden (“ADW”) staff members per tour”

The Department does not accept DOI's recommendation that DOC staff COD with two ADWs per tour. The Department is currently only budgeted for one ADW, and any additional staffing would require the submission of a new needs request to the City's Office of Management and Budget.

13. “Recommendations relating to IRS Incident Photos”

The Department partially accepts the first four subparts of DOI's recommendation regarding IRS incident photos. The Department is unable to accept the fifth subpart, which recommends that anyone who refuses to have a photograph taken must sign a refusal form. Such a recommendation is not operationally feasible, and

further if an individual refuses to take a photograph there is an equal likelihood that the individual will refuse to sign a refusal form.

With respect to the first four subparts, the Department agrees that photographs should be taken following all Use of Force, inmate-on-inmate fight, or assault on staff incident. Department policy already requires photographs to be taken of all involved parties following a Use of Force incident and uploaded into IRS. The Department intends to review both our Use of Force Directive 5006R-D and our Facility Investigations Directive 5007 to ensure that both policies include language requiring staff to take the photos as close in time to the incident as possible. Similarly, photographs of any actual or alleged staff injuries sustained as a result of an assault on staff incident are required, and as the Department modifies IRS to include the new Primary Incident Type discussed above in response to DOI's second recommendation, the Department will include the capability to upload photographs. With respect to inmate-on-inmate fights, the Department also plans to modify the Inmate Fight Tracking Database to allow the uploading and linking of photographs.

Sincerely,

A handwritten signature in blue ink that reads "Cynthia Brann".

Cynthia Brann
Commissioner